Securitization for Generation Asset Retirement

Study Group Work Products

2020 NC Energy Regulatory Process

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EXPANDING SECURITIZATION:

ACCELERATING THE CLEAN ENERGY TRANSITION AND BUILDING THE NC ECONOMY

The 2020 North Carolina Energy Regulatory Process prioritized energy reforms that would drive affordability, carbon-reduction, and align regulatory incentives with policy goals.

WHAT IS THE OPPORTUNITY?

The declining costs of renewable energy and higher cost of operating coal plants relative to other resources has increased interest in retiring coal plants in a low-cost way. However, these coal units remain in the portfolio due to the utilities' need to recover their investment and maintain reliability.

In order to retire coal plants, the remaining undepreciated value must be addressed. Securitization, an innovative financing mechanism, has the potential to create a win-win-win for customers, utilities, and communities. If properly designed, it can be a tool to help facilitate a system-wide transformation - lowering customers' bills, reducing air and water pollution, supporting coal plant communities in the transition, and allowing utilities to reinvest in clean energy to replace lost revenue from legacy coal plant investments. This tool is already available to North Carolina utilities to recover storm costs. Expanding securitization to retire coal plants requires enabling legislation and subsequent implementation to provide creditors with assurances that sufficient funds will be collected to cover the costs of the bonds over its lifetime.

WHAT IS SECURITIZATION?

Securitization is a refinancing mechanism involving the issuance of bonds to raise funds to refinance the remaining undepreciated value of existing coal plants. The bonds are paid back over time through a dedicated surcharge on customer bills. Because the surcharge is irrevocable and payment to the lender is basically "guaranteed" through the legislation, the bonds can typically be issued at an interest rate even lower than the usual utility bond interest rate. In addition, most major credit rating agencies do not include securitization debt, up to certain limits, in assessing the utilities debt to equity ratio for credit rating purposes. Therefore, the utility can generally refinance the outstanding undepreciated value with 100% securitization financing instead of using its standard combination of debt and equity financing. Both of these factors combined lead to cost savings for customers.

By itself, securitization would translate to a loss in earnings for the regulated utility by reducing the total amount of capital in which the utility is invested. However, securitization can also be paired with utility reinvestment in replacement capacity to maintain reliability. Because this replacement generation would be financed using a combination of debt and equity, this option has the potential to recoup and even grow utility earnings.

HOW BIG IS THE OPPORTUNITY IN NC?

Duke Energy currently operates six coal plants totaling more than 10,000 MW of capacity. The low cost of natural gas and renewables, along with additional environmental compliance costs, has shifted electricity generation toward cheaper sources of energy in recent years, and the trend is expected to continue as the economic gap widens. Coal plants in the state, originally built to run 75-80% of the time, are now running, on average, only 35% of the time.

Recognizing the significant potential in ratepayer savings, the North Carolina Utilities Commission ordered Duke Energy to evaluate the merits of continuing to operate the coal units by examining the most economic and the earliest practicable dates of retirements. In its 2020 IRP, for the most economic case, Duke Energy recommended the retirement of 11 of 18 units by 2030, even without securitization. For the earliest practicable retirement case, Duke Energy identified that all coal units could be retired by 2030, with one unit converted to natural gas. Securitization should be a tool made available to North Carolina

regulators and utilities for cases where it would provide a benefit in customer rates to retire and replace the coal plant.

HOW DOES SECURITIZATION SOLVE THE PROBLEM?

Through the refinancing of the plant using low-cost debt, securitization has the potential to:

- Create customer savings on day-one and for the remainder of the plant's life due to lower costs of financing
- Create funds for transition assistance to workers and communities affected by plant closures
- Keep the utility whole through reinvestment in replacement renewable generation and/or storage

Early economic retirement of North Carolina's coal plants and replacement with zero emitting resources is estimated to achieve the 70% reduction in greenhouse gas emissions goal specified in the Clean Energy Plan by itself, provided the amount of imported electricity and its carbon intensity remain at or below historical levels.

As North Carolina has a significant amount of coal capacity that could be financed to provide ratepayer benefits, the large amount of generation needing to be replaced must be planned carefully to ensure costs are minimized, utilities are fairly compensated, system reliability is maintained, cleaner technology solutions are deployed, and pollution levels are reduced.

HOW IS SECURITIZATION DIFFERENT FROM CURRENT OPTIONS TO FINANCE COAL PLANT RETIREMENTS?

The three options currently available to utilities and regulators all have drawbacks and benefits, especially for customers.

Accelerate the retirement of these plants through a rapid return of unrecovered investment (e.g., through accelerated schedule of undepreciated assets than normally allowed over the project life). This helps get the uneconomic plant offline more quickly and likely saves ratepayers money long term. But accelerated depreciation could cause short-term rate spikes, which would impact businesses and low-to-moderate income customers acutely.

Retire a plant and create a regulatory asset**.** This allows the utility to continue to earn a return on a plant that is no longer in service, until the plant is fully depreciated. The downside of this path is that customers are paying for an asset that provides no benefits. For the utility there is also the risk of future disallowance, as there is no guarantee that the public utilities commission will continue to let the regulatory asset be charged to ratepayers.

Disallow the utility from recovering any remaining plant balance. The public utilities commission could decide that the uneconomic plant is no longer "used and useful" and prohibit the utility from recovering any remaining plant balance. This has obvious downsides for the utility, possibly impacting their credit rating, impacting customers over the long run, and potentially chilling interest in future investments.

HAS SECURITIZATION BEEN USED BEFORE?

In 2019, following the significant disaster recovery and response expenses incurred from hurricanes Matthew and Florence, the North Carolina General Assembly passed SB559 (SL 2019-244) to permit financing for certain storm recovery costs.

Though securitization's proposed use for early coal retirement is recent, it has been used extensively in the past for a variety of reasons – ranging from recovering costs from a damaged plant[1] to financing pollution control upgrades[2] to enabling electricity market restructuring[3]. It is a financial mechanism that Wall Street is both familiar and comfortable with.

Securitization for early plant retirement is already enabled in four states, three of which passed legislation in 2019. PNM Resources in New Mexico is in the process of securitizing its San Juan coal plant[4] and replacing it with a portfolio of renewable energy and storage. Duke Energy Florida securitized $1.3 billion of the remaining plant balance of the Crystal River nuclear plant, resulting in more than $700 million in customer savings. Many other states are expected to introduce supporting legislation in the 2021 session.

This fact sheet represents the work of stakeholders as of 12/18/2020.

About the North Carolina Energy Regulatory Process

Governor Cooper's Executive Order 80 mandated the development of a clean energy plan for the state of North Carolina. The Clean Energy Plan recommended the launch of a stakeholder process to design policies that align regulatory incentives with 21st century public policy goals, customer expectations, utility needs, and technology innovation. The stakeholder process was launched in February 2020 and has led to policy proposals on energy reform.

LEARN MORE

Contact NERP Securitization Study Group Leads:
David Rogers, Sierra Club, david.rogers@sierraclub.org
Tobin Freid, Durham County, tfreid@dconc.gov

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https://deq.nc.gov/CEP-NERP

[1] *See* https://www.tampabay.com/news/business/energy/duke-energy-florida-customers-will-see-a-new-charge-on-their-bill-starting/2282006/

[2] *See* https://saberpartners.com/press/allegheny-closes-pollution-control-issue/

[3] *See* http://nescoe.com/resource-center/restructuring-dec2015/

[4] *See* https://www.abqjournal.com/1439120/prc-approves-san-juan-abandonment.html

SECURITIZATION STATUTE COMPARISON

The 2020 North Carolina Energy Regulatory Process (NERP) prioritized energy reforms that would drive affordability, carbon-reduction, and align regulatory incentives with policy goals.

INTRODUCTION

Securitization is a financial mechanism allowing bonds to be used to recover undepreciated capital costs of assets and, in some cases, replace other losses of revenue. Securitized bonds, also called ratepayer backed bonds, must be authorized by state legislation. A comparison of securitization statutes that include recovery of undepreciated plant balances and transition assistance for workers and communities affected by early plant retirements can be useful as North Carolina decision makers consider this issue.

Key provisions in legislation typically include:

- Creation of the property right which underlies the bonds
- Definition of allowable uses for the bonds
- Key protections for bond purchasers
- Process for defining bond issuance amount and procedures
- Role of the Public Utilities Commission
- Role of the Public Utility

The North Carolina securitization legislation passed in 2019 contains the basic legal and financial components for creating securitized bonds in statute. However, the only allowable use for the bonds was is recovery of costs incurred from storm damage.

Statutes in other states provide for different or additional uses for the bonds. Specifically, use of bonds for utility capital recovery in the event of early plant retirement and for transition assistance for communities and workers affected by early plant retirements. Statutes permitting these uses also define acceptable capital reinvestment opportunities for the utility retiring an uneconomic plant. Inclusion of a reinvestment or “capital recycling” pathway is a key to securing utility support for securitization legislation with the plant retirement bond use.

Securitization statutes specify the role of the public utilities commission in issuing the financing order for the bonds and its oversight in the bond issuance process. Commission oversight is key to protecting ratepayer interests. Comparisons between the commission’s role as defined in the North Carolina Statute, and statutes in Colorado, Montana, New Mexico and Michigan are provided.

COMPARISON OF SECURITIZATION STATUES

State	Specified Bond Uses				Utility	Regulator
	Storm Costs	*Plant Retirement*	Retire Debt/Equity	*Transition Assistance*	Reinvestment Options	*Strength of PUC Role*
North Carolina	**X**					medium
Colorado		**X**		**X**	**X**	strong
Montana		**X**			**X**	strong
New Mexico		**X**		**X**	**X**	weak
Michigan		**X**	**X**			weak

BEYOND STORM COSTS: BOND USES AUTHORIZED IN CO, MT, NM, MI STATUTES

1. PLANT RETIREMENT

Using low-interest securitized bonds to replace higher cost utility capital remaining in a retired plant saves ratepayers money. Utility concerns about maintaining rate base often require the legislation include a pathway for reinvestment or "recycling" the returned utility capital into other approved uses. Securitization statutes in Colorado, Montana and Michigan allow securitized bonds to be used for recovering the remaining utility capital invested in a retired power generating station. The New Mexico statute allows bond use for the retirement of a specific power generating station defined in the statute.

Colorado

CO SB19-236, Article 41 – The Colorado Energy Impact Bond Act, part of the Public Utility Commission Sunset/Reauthorization Act

Allowable Use: The allowable uses for the bonds extend to the "pretax costs", including unrecovered capitalized cost of a retired electric generating facility that will be retired, and also the "pretax costs" incurred previously related to a commission-approved closure of an electric generating facility retired before the statute was in effect. (CO SB19-236 - page 52, lines 15-24; line 27; page 53, lines 1-3)

Montana

2019 MT HB 467, placed securitization in Statute.

Allowable Use: The two allowable bond uses are the "pretax costs" incurred when the utility retires or replaces electric generating infrastructure or facilities located in Montana, and the "pretax costs" previously incurred related to the closure or replacement or electric generating infrastructure or facilities. (2019 MT HB 467 – page 4, (13)(a))

New Mexico

NM 2019 Energy Transition Act. Securitization is a centerpiece of this act which also included a renewable portfolio standard and climate goals.

Allowable Use: The act allows bond use for the abandonment costs of a "qualifying generating facility", and specifies cap on the amount of money which may be securitized. Other specific dollar amounts for decommissioning and mine reclamation costs, and job retraining are listed as allowable uses. The specificity of the dollar amounts and retirement date for the generating station are tied to a specific plant owned by Public Service of New Mexico (PNM), one of the primary advocates for the bill. The qualifying generating facility language does have some flexibility for application to other plants in New Mexico. (2019 NM SB 489 – page 4, lines 9-24; page 9, lines 6-19)

Michigan
MI 2000, Act 142, Customer Choice and Electricity Reliability Act included securitization. It was used in 2016 by Consumers Energy for the early retirement of a 950MW coal-fired electric generating station. The bond issue amount was $389.6M. Recently, Consumers Energy filed for a $702.8M financing order related to the early retirement of Units 1 & 2 at the Karn coal-fired generating station.

Allowable Use: Refinancing or retirement of debt or equity. (MI 1939 PA 3, Sec. 10h (g); Sec. 10j (1)(a))

2. TRANSITION ASSISTANCE: AUTHORIZED IN CO AND NM STATUES

When securitization is used for the early retirement of an electric generating facility, some statutes passed in 2019 added a new use for securitized bonds, providing transition assistance to workers and communities affected by the closure.

Colorado
The introduced 2019 bill, HB19-1037, included a formula for sharing the savings realized by refinancing the remaining capital in a retired plant between ratepayers (85% of the savings) and the affected workers and communities (15% of the savings). The savings would be calculated as the net present value of the savings over the tenor (life) of the bonds, compared to the amount ratepayers would have paid to retire the plant without the lower-cost bonds. However, this formula did not survive the legislative process. Instead, the bill includes a simple phase allowing bonds to be used for transition assistance. The decision on the amount of funds for transition assistance will be made by the Commission as part of the financing order.

Allowable Use: The statute allows the bonds to be used for "amounts for assistance to affected workers and communities, if approved by the Commission". (CO SB19-236 - page 52, lines 25-26)

New Mexico
The Energy Transition act contains very detailed guidelines, establishing three different funds for state agencies to administer transition funding for affected Indian communities, affected communities and workers.

Allowable Use: 0.5% of amount bonded is earmarked for the energy transition Indian affairs fund; 1.65% of the bonded amount goes to the energy transition economic development fund; and 3.35% of the bonded amount goes to the energy transition displaced worker assistance fund. (2019 NM SB 489 – page 4, lines 24-25; page 5, lines 1-3; 20-21; SECTION 16, page 40-47)

UTILITY REINVESTMENT: INCLUDED IN CO, MT, NM STATUTES

Colorado
Reinvestment/Capital Recycling: Specific opportunities for the utility to reinvest capital recovered from securitizing a retired plant are not listed in Article 41. Instead, reinvestment opportunities for the utility are defined earlier in the statute in the section describing the Clean Energy Plan the utility is required to submit to the Commission. This plan requires the utility to adopt carbon reduction goals, strategies for achieving the goals, projected costs and proposed new clean energy acquisitions required to meet the goals. The utility is awarded up to 50% ownership of the new clean energy acquisitions. (CO SB19-236 - page 17, lines 1-17)

Montana
Reinvestment/Capital Recycling: The statute provides guidance on how the utility shall expend or invest the funds received from a bond issue. It will first reduce the balance owed on the retired electric generating facility. Following that, the utility may invest or expend funds to own least-cost generation resources, electric storage, network modernization, or to replace any damaged or destroyed electric transmission facilities. (2019 MT HB 467 – page 18-19, Section 18)

New Mexico
Reinvestment/Capital Recycling: The statute provides a detailed process for how PNM must replace the power from the abandoned generating facility. The specificity is partially a means to replace property tax base for the affect school district and community. (2019 NM SB 489 – page 10, lines 2-25; page 11, lines 1-23)

ROLE OF THE PUBLIC UTILITIES COMMISSION: STATUES IN CO, MT, NM, MI

Securitization statutes should describe the role of the public utilities commission in issuing a financing order that 1) allows the issuance of bonds; 2) establishes oversight of the bond issuance process; and 3) protects ratepayer interests throughout both processes. The stronger the commission's role, and the more oversight it exercises, the better the outcome for ratepayers.

During the legislative process, the utility has an interest in limiting the commission's role and oversight authority; ratepayer advocates typically push for the opposite outcome, with compromises occurring to achieve bill passage. Among the state statutes we review in this memo, the Colorado statute creates the strongest commission oversight role, followed by Montana, Michigan, and then New Mexico. A key component for empowering a commission to conduct effective oversight is the authority to hire outside financial advisors to assist the commission. Funds for outside advisors or additional staff to manage the bond issuance process may not be covered in a commission's normal staff budget. Statutes typically allow commission expenses related to a bond issue to be covered as a part of the bond issue expenses. If a utility receives a financing order, but decides not to issue the bonds, commission expenses incurred in producing the financing order would have to be paid by the utility, which can recover those expenses in a future rate case.

The existing North Carolina securitization statute provides reasonable oversight authority for the commission. The Commission can hire outside financial advisors, with their costs paid as part of the bond issue. The North Carolina statute, however, does not address the situation of recovery of commission expenses when the utility does not follow through and issue bonds.

Colorado

Public Utility Commission Role: The Statute gives the Commission the authority to:

- Require the bonds provide maximum net present value savings for ratepayers (CO SB19-236 - page 59, lines 14-27)
- Conduct oversight of how the bond issue will be structured, priced and marketed to achieve maximum savings for ratepayers (CO SB19-236 - page 60, lines 14-22)
- Attach conditions to the financing order to maximize benefits and minimize risks for all parties (CO SB19-236 - page 66, lines 4-8)
- Hire outside financial advisors to assist the Commission in its oversight work (CO SB19-236 - page 67, lines 9-20)
- Require the utility to simultaneously add a negative cost rider to ratepayer bills to reflect the decreased cost of service and counterbalance the bond repayment charge (CO SB19-236 - page 62, lines 19-24)
- Conduct a rule making for how to manage the securitization financing order process. (CO SB19-236 - page 65, line 27)

Montana

Public Utility Commission Role: The Statute gives the Commission the authority to:

- Require the bonds to provide substantial quantifiable savings for ratepayers (2019 MT HB 467, Section 5 (iv)(c) (I)(ii)
- Include findings determined by the commission to be in the best interests of consumers. (2019 MT HB 467, Section 5 (vii)
- Require the utility to reduce rates simultaneously with the addition of the bond repayment charge on ratepayer bills (2019 MT HB 467, Section 5 (B))
- Hire outside financial advisors to assist the Commission in its oversight work. (2019 MT HB 467, Section 5 (B)(3)(f))
- Conduct a rule making for how to manage the securitization financing order process (2019 MT HB 467, Section 19)

Michigan

Public Utility Commission Role: The Statute gives the Commission limited authority:

- Oversight to ensure customer savings is weak – savings must be "tangible and quantifiable", but no reference is made to maximize savings or how savings should be calculated. ((MI 1939 PA 3, Sec.10i (2)(b)(c))
- The authority to hire outside financial advisors to assist the Commission in its oversight work is included. ((MI 1939 PA 3, Sec.10i (10))

New Mexico

Public Commission Utility Role: The Statute gives the Commission very limited authority:

- No oversight to ensure customer savings. Savings are calculated by applicant utility as it deems appropriate, and submitted to the Commission as part of the financing order. (2019 NM SB 489 – page 10, lines 2-25; page 13, lines 17-25)
- Commission has no authority to determine the amount to be securitized for plant retirement or transition assistance. These amounts were determined by the legislature and are in Statute. (2019 NM SB 489 – page 4, lines 9-25; page 40-47, Section 16)
- Commission is required to approve a financing order from qualified applicant utility, if financing order application meets Statute requirements. (2019 NM SB 489 – page 17, lines 7-17)
- Commission does have the power to review and approve replacement generation options. (2019 NM SB 489 – page 10, lines 2-25; page 11, lines 1-23)

RECOMMENDATIONS

- The North Carolina Storm Recovery Costs securitization statute could be amended to include additional permitted uses for the bonds. Additional uses could include plant retirement costs and transition assistance for affected communities and workers.
- If plant retirement becomes an allowable use for the bonds, the bill should also include guidance on re-investment opportunities for the utility.
- The existing statute permits the Commission to hire outside financial advisors with the costs paid as part of the bond issue. Adding a provision for Commission cost recovery in the event that bonds are not issued by the utility, similar to the language in the Colorado statute, may be helpful.
- The North Carolina statute provides reasonable oversight authority for the commission. Attempting to strengthen commission authority might trigger utility resistance to the bill.

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NERP ANALYSIS SUMMARY

GENERATION ASSET RETIREMENT FINANCIAL ANALYSIS

COMPARISON OF SECURITIZATION AND REGULATORY ASSET TREATMENT: RELATIVE IMPACTS ON RATEPAYER SAVINGS, UTILITY EARNINGS, AND COMMUNITY ASSISTANCE

The 2020 North Carolina Energy Regulatory Process prioritized energy reforms that would drive affordability, carbon-reduction, and align regulatory incentives with policy goals.

SUMMARY OF FINDINGS

Based on financial analysis performed for a select group of Duke Energy Progress (DEP) coal plants, Rocky Mountain Institute (RMI) finds that securitization (with reinvestment) leads to greater ratepayer savings (in the short and long term) than using regulatory asset treatment as a method for early retirement. Furthermore, securitization with reinvestment provides the utility opportunity for earnings through additions to rate base and could fund transition assistance for impacted communities.

For example, securitizing Mayo (with utility reinvestment) could save ratepayers between $13-19/MWh (or $18-29MM) in the first year and between $3-5/MWh (or $46-96MM) on a levelized basis, compared to a regulatory asset treatment. The utility has a significant earnings opportunity with securitization, though less than through the regulatory asset treatment – up to $600-800MM with the former vs. up to $800-1100MM (on a levelized basis and including tax credits) with the latter. Finally, securitization could result in between $8-15MM in community assistance.

While RMI's analysis shows securitization generating ratepayer savings compared to a regulatory asset treatment, the magnitude of that difference varies. In Roxboro 3, for example, securitization with reinvestment could save ratepayers between $4-6/MWh (or $9-13MM) in the first year and between $17-21MM on a levelized basis, compared to regulatory asset treatment. The earnings opportunity for the utility in retiring and replacing Roxboro 3 is similar for both securitization & regulatory assets – up to $700-800MM. Finally, between $2-4MM in community assistance could be made available for this plant.

The ratepayer savings, utility earnings and community assistance opportunity for Roxboro 4 is similar to that of Roxboro 3, for both securitization and regulatory asset treatment.

IMPORTANT CAVEATS AND ASSUMPTIONS

RMI's financial model was used to provide *relative* and *illustrative* modeling results – in their current form, the results are not meant to estimate the absolute size of ratepayer savings or utility earnings from any retirement method.

Rather, the results aim to show the tradeoffs (for the utility, customer and community) between two different methods of early plant retirement, and the relative magnitude of the differences in the two approaches.

If a decision is made to investigate the actual implementation of securitization, the analysis would have to be revisited to more accurately account for (among other items):

- The expected 'ramp down' of existing coal plants, prior to retirement
- The sequencing of replacement generation and storage, relative to early retirement
- Implications of early retirement at the fleet level (vs. the individual plant level)

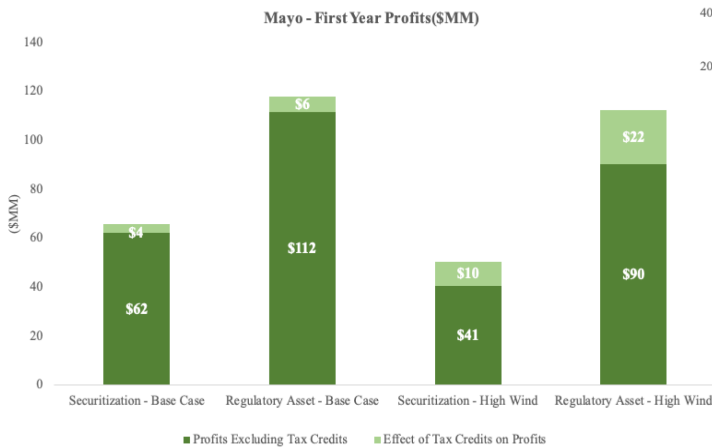
RMI believes that, while the above considerations are critical to implementation, they do not significantly alter the potential *opportunity* presented by securitization for customers, the utility and the community, relative to a regulatory asset treatment.

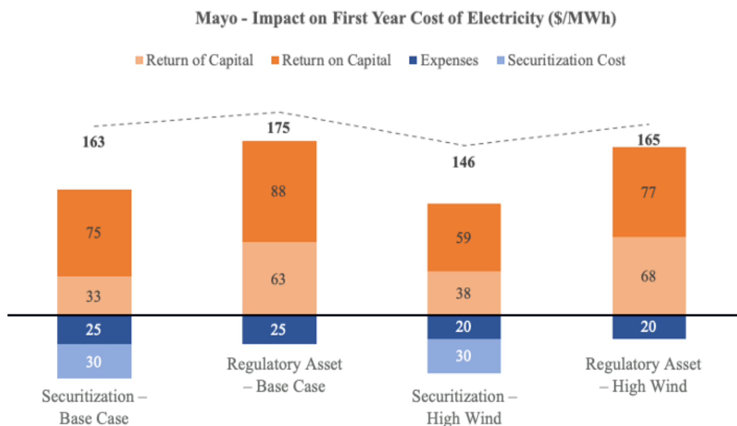
ILLUSTRATIVE MODELING RESULTS

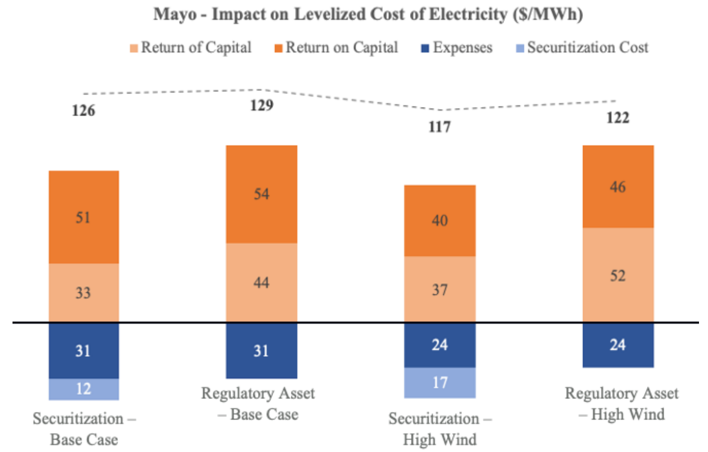
RMI modeled three DEP plants – Mayo 1, Roxboro 3 and Roxboro 4. For each of the plants, two methods of retirement were considered: i) securitization with reinvestment and, ii) regulatory asset treatment.

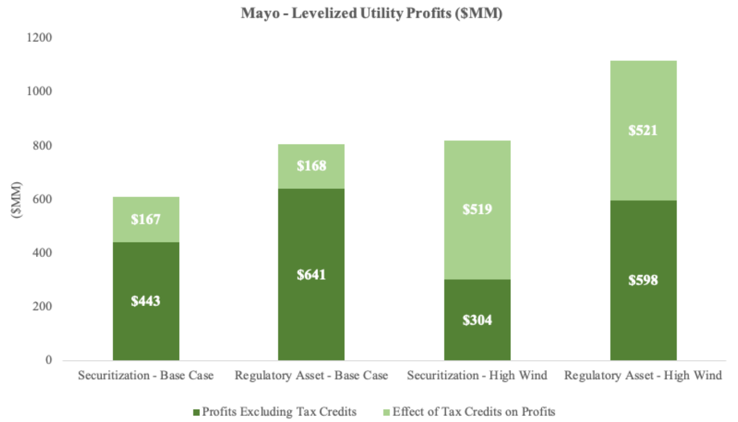
Furthermore, to determine the retirement year and subsequent replacement portfolio for each plant, Scenario A (Base Case without Carbon Policy) and Scenario D (High Wind) from the DEP 2020 Integrated Resource Plan were used.

The results for Mayo 1 are shown below as an illustrative example:









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GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2021

SENATE/HOUSE BILL XXX

A BILL TO BE ENTITLED
"AN ACT TO PERMIT FINANCING FOR CERTAIN UNDEPRECIATED UTILITY PLANT COSTS AND FOR TRANSITION ASSISTANCE FOR AFFECTED WORKERS AND COMMUNITIES"

The General Assembly of North Carolina enacts:

SECTION 1. Article 8 of Chapter 62 of the General Statutes is amended by adding a new section to read:

"**§ 62-173. Financing for certain energy transition costs.**

(a) Definitions. – The following definitions apply in this section:

(1) Ancillary agreement. – A bond, insurance policy, letter of credit, reserve account, surety bond, interest rate lock or swap arrangement, hedging arrangement, liquidity or credit support arrangement, or other financial arrangement entered into in connection with energy transition bonds.

(2) Assignee. – A legally recognized entity to which a public utility assigns, sells, or transfers, other than as security, all or a portion of its interest in or right to energy transition property. The term includes a corporation, limited liability company, general partnership or limited partnership, public authority, trust, financing entity, or any entity to which an assignee assigns, sells, or transfers, other than as security, its interest in or right to energy transition property.

(3) Bondholder. – A person who holds an energy transition bond.

(4) Code. – The Uniform Commercial Code, Chapter 25 of the General Statutes.

(5) Commission. – The North Carolina Utilities Commission.

(6) Customer securitization savings – The arithmetic difference between the net present value of the costs to customers that are estimated to result from the issuance of energy transition bonds and the net present value of the costs that would result from the application of the traditional method of financing and recovering energy transition costs from customers.

(7) Energy transition bonds. – Bonds, debentures, notes, certificates of participation, certificates of beneficial interest, certificates of ownership, or other evidences of indebtedness or ownership that are issued by a public utility or an assignee pursuant to a financing order, the proceeds of which are used directly or indirectly to recover, finance, or refinance Commission-approved energy transition costs and financing costs, and that are secured by or payable from energy transition property. If certificates of participation or ownership are issued, references in this section to principal, interest, or premium shall be construed to refer to comparable amounts under those certificates.

(8) Energy transition charge. – The amounts authorized by the Commission to repay, finance, or refinance energy transition costs and financing costs and

that are nonbypassable charges (i) imposed on and part of all retail customer bills, (ii) collected by a public utility or its successors or assignees, or a collection agent, in full, separate and apart from the public utility's base rates, and (iii) paid by all existing or future retail customers receiving transmission or distribution service, or both, from the public utility or its successors or assignees under Commission-approved rate schedules or under special contracts, even if a customer elects to purchase electricity from an alternative electricity supplier following a fundamental change in regulation of public utilities in this State.

(9) Energy transition costs. – All of the following:

(a) (i) at the option of and upon petition by an public utility, and as approved by the commission, any of the pretax costs that the electric utility has incurred or will incur that are caused by, associated with, or remain as a result of the retirement of an electric generating facility located in the state.
(ii) as used in this subsection, "pretax costs," include, but are not limited to, the unrecovered capitalized cost of a retired electric generating facility, costs of decommissioning and restoring the site of the electric generating facility, and other applicable capital and operating costs, accrued carrying charges, deferred expenses, reductions for applicable insurance and salvage proceeds and the costs of retiring any existing indebtedness, fees, costs, and expenses to modify existing debt agreements or for waivers or consents related to existing debt agreements.

(b) amounts for transition assistance to affected workers and communities if approved by the commission;

(c) pretax costs that an electric utility has previously incurred related to the commission-approved closure of an electric generating facility occurring before the effective date of this section.

(d) energy transition costs do not include any monetary penalty, fine, or forfeiture assessed against an electric utility by a government agency or court under a federal or state environmental statute, rule, or regulation.

(10) Energy transition property. – All of the following:

a. All rights and interests of a public utility or successor or assignee of the public utility under a financing order, including the right to impose, bill, charge, collect, and receive energy transition charges authorized under the financing order and to obtain periodic adjustments to such charges as provided in the financing order.

b. All revenues, collections, claims, rights to payments, payments, money, or proceeds arising from the rights and interests specified in the financing order, regardless of whether such revenues, collections, claims, rights to payment, payments, money, or proceeds are imposed, billed, received, collected, or maintained together with or commingled with other revenues, collections, rights to payment, payments, money, or proceeds.

(11) Financing costs. – The term includes all of the following:

a. Interest and acquisition, defeasance, or redemption premiums payable on energy transition bonds.

b. Any payment required under an ancillary agreement and any amount required to fund or replenish a reserve account or other accounts established under the terms of any indenture, ancillary agreement, or other financing documents pertaining to energy transition bonds.

c. Any other cost related to issuing, supporting, repaying, refunding, and servicing energy transition bonds, including, servicing fees, accounting and auditing fees, trustee fees, legal fees, consulting fees, structuring adviser fees, administrative fees, placement and underwriting fees, independent director and manager fees, capitalized interest, rating agency fees, stock exchange listing and compliance fees, security registration fees, filing fees, information technology programming costs, and any other costs necessary to otherwise ensure the timely payment of energy transition bonds or other amounts or charges payable in connection with the bonds, including costs related to obtaining the financing order.

d. Any taxes and license fees or other fees imposed on the revenues generated from the collection of the energy transition charge or otherwise resulting from the collection of energy transition charges, in any such case whether paid, payable, or accrued.

e. Any State and local taxes, franchise, gross receipts, and other taxes or similar charges, including regulatory assessment fees, whether paid, payable, or accrued.

f. Any costs incurred by the Commission or public staff for any outside consultants or counsel retained in connection with the securitization of energy transition costs, except as provided in subparagraph (d)(1)c.

(12) Financing order. – An order that authorizes the issuance of energy transition bonds; the imposition, collection, and periodic adjustments of an energy transition charge; the creation of energy transition property; and the sale, assignment, or transfer of energy transition property to an assignee.

(13) Financing party. – Bondholders and trustees, collateral agents, any party under an ancillary agreement, or any other person acting for the benefit of bondholders.

(14) Financing statement. – Defined in Article 9 of the Code.

(15) Pledgee. – A financing party to which a public utility or its successors or assignees mortgages, negotiates, pledges, or creates a security interest or lien on all or any portion of its interest in or right to energy transition property.

(16) Public utility. – A public utility, as defined in G.S. 62-3, that sells electric power to retail electric customers in the State.

(b) Financing Orders. –

(1) A public utility may petition the Commission for a financing order. The petition shall include all of the following:

a. The energy transition costs incurred by the utility and an estimate of the costs that are being undertaken but are not completed.

b. A statement of whether the public utility proposes to finance all or a portion of the energy transition costs using energy transition bonds. If the public utility proposes to finance a portion of the costs, the public utility must identify the specific portion in the petition. By electing not to finance a portion of such energy transition costs using energy transition bonds, a public utility shall not be deemed to waive its right to recover such costs pursuant to a separate proceeding with the Commission.

c. A proposed amount, for Commission consideration, to be included in energy transition costs for use as transition assistance for workers and local governments negatively affected by the retirement of an electric generating facility.

d. An estimate of the financing costs related to the energy transition bonds.

e. An estimate of the energy transition charges necessary to recover the energy transition costs and financing costs and the proposed period for recovery of such costs.

f. An estimate of the quantifiable customer securitization savings resulting from the use of energy transition bonds instead of traditional cost recovery methods.

g. Direct testimony and exhibits supporting the petition.

(2) If a public utility is subject to a settlement agreement that governs the type and amount of costs that could be included in energy transition costs and the public utility proposes to finance all or a portion of the costs using energy transition bonds, then the public utility must file a petition with the Commission for review and approval of those costs no later than 90 days before filing a petition for a financing order pursuant to this section.

(3) Petition and order. –

a. Proceedings on a petition submitted pursuant to this subdivision begin with the petition by a public utility, filed subject to the time frame specified in subdivision (2) of this subsection, if applicable, and shall be disposed of in accordance with the requirements of this Chapter and the rules of the Commission, except as follows:

1. Within 14 days after the date the petition is filed, the Commission shall establish a procedural schedule that permits a Commission decision no later than 210 days after the date the petition is filed.

2. No later than 210 days after the date the petition is filed, the Commission shall issue a financing order or an order rejecting the petition. A party to the Commission proceeding may petition the Commission for reconsideration of the financing order within five days after the date of its issuance.

b. A financing order issued by the Commission to a public utility shall include all of the following elements:

1. Except for changes made pursuant to the formula-based mechanism authorized under this section, the amount of energy transition costs to be financed using energy transition

bonds. The Commission shall describe and estimate the amount of financing costs that may be recovered through energy transition charges and specify the period over which energy transition costs and financing costs may be recovered.

2. A finding that the proposed issuance of energy transition bonds and the imposition and collection of an energy transition charge are expected to provide quantifiable benefits to customers as compared to the costs that would have been incurred absent the issuance of energy transition bonds and a statement of the net present value of those benefits to customers.

3. A finding that the structuring and pricing of the energy transition bonds are reasonably expected to result in the lowest energy transition charges consistent with market conditions at the time the energy transition bonds are priced, and with the terms set forth in such financing order.

4. A determination of the portion, up to 15%, of the customer securitization savings that shall be included in transition bond costs and used to provide transition assistance to workers and local governments negatively affected by the retirement of the electric generating facility.

5. A requirement that, for so long as the energy transition bonds are outstanding and until all financing costs have been paid in full, the imposition and collection of energy transition charges authorized under a financing order shall be nonbypassable and paid by all existing and future retail customers receiving transmission or distribution service, or both, from the public utility or its successors or assignees under Commission-approved rate schedules or under special contracts, even if a customer elects to purchase electricity from an alternative electric supplier following a fundamental change in regulation of public utilities in this State.

6. A formula-based true-up mechanism for making, at least annually, expeditious periodic adjustments in the energy transition charges that customers are required to pay pursuant to the financing order and for making any adjustments that are necessary to correct for any overcollection or undercollection of the charges or to otherwise ensure the timely payment of energy transition bonds and financing costs and other required amounts and charges payable in connection with the energy transition bonds.

7. The energy transition property that is, or shall be, created in favor of a public utility or its successors or assignees and that shall be used to pay or secure energy transition bonds and all financing costs.

8. The degree of flexibility to be afforded to the public utility in

establishing the terms and conditions of the energy transition bonds, including, but not limited to, repayment schedules, expected interest rates, and other financing costs.

9. How energy transition charges will be allocated among customer classes.

10. A requirement that, after the final terms of an issuance of energy transition bonds have been established and before the issuance of energy transition bonds, the public utility determines the resulting initial energy transition charge in accordance with the financing order and that such initial energy transition charge be final and effective upon the issuance of such energy transition bonds without further Commission action so long as the energy transition charge is consistent with the financing order.

11. A requirement that the applicant public utility, simultaneously with the inception of the collection of energy transition charges, reduce its rates through a reduction in base rates or by a negative rider on customer bills in an amount equal to the revenue requirement associated with the utility assets being financed by energy transition bonds

12. A method of tracing funds collected as energy transition charges, or other proceeds of energy transition property, and determine that such method shall be deemed the method of tracing such funds and determining the identifiable cash proceeds of any energy transition property subject to a financing order under applicable law.

13. Any other conditions not otherwise inconsistent with this section that the Commission determines are appropriate.

c. A financing order issued to a public utility may provide that creation of the public utility's energy transition property is conditioned upon, and simultaneous with, the sale or other transfer of the energy transition property to an assignee and the pledge of the energy transition property to secure energy transition bonds.

d. If the Commission issues a financing order, the public utility shall file with the Commission at least annually a petition or a letter applying the formula-based mechanism and, based on estimates of consumption for each rate class and other mathematical factors, requesting administrative approval to make the applicable adjustments. The review of the filing shall be limited to determining whether there are any mathematical or clerical errors in the application of the formula-based mechanism relating to the appropriate amount of any overcollection or undercollection of energy transition charges and the amount of an adjustment. The adjustments shall ensure the recovery of revenues sufficient to provide for the payment of principal, interest, acquisition, defeasance, financing costs, or redemption premium and other fees, costs, and charges in respect of energy transition bonds

approved under the financing order. Within 30 days after receiving a public utility's request pursuant to this paragraph, the Commission shall either approve the request or inform the public utility of any mathematical or clerical errors in its calculation. If the Commission informs the utility of mathematical or clerical errors in its calculation, the utility may correct its error and refile its request. The time frames previously described in this paragraph shall apply to a refiled request.

e. Subsequent to the transfer of energy transition property to an assignee or the issuance of energy transition bonds authorized thereby, whichever is earlier, a financing order is irrevocable and, except for changes made pursuant to the formula-based mechanism authorized in this section, the Commission may not amend, modify, or terminate the financing order by any subsequent action or reduce, impair, postpone, terminate, or otherwise adjust energy transition charges approved in the financing order. After the issuance of a financing order, the public utility retains sole discretion regarding whether to assign, sell, or otherwise transfer energy transition property or to cause energy transition bonds to be issued, including the right to defer or postpone such assignment, sale, transfer, or issuance.

f. Transition assistance funds, if included in the bond issue, may be transferred to a third-party entity designated by the commission to administer transition assistance on behalf of displaced workers and affected communities.

(4) At the request of a public utility, the Commission may commence a proceeding and issue a subsequent financing order that provides for refinancing, retiring, or refunding the energy transition bonds issued pursuant to the original financing order if the Commission finds that the subsequent financing order satisfies all of the criteria specified in this section for a financing order. Effective upon retirement of the refunded energy transition bonds and the issuance of new energy transition bonds, the Commission shall adjust the related energy transition charges accordingly.

(5) Within 60 days after the Commission issues a financing order or a decision denying a request for reconsideration or, if the request for reconsideration is granted, within 30 days after the Commission issues its decision on reconsideration, an adversely affected party may petition for judicial review in the Supreme Court of North Carolina. Review on appeal shall be based solely on the record before the Commission and briefs to the court and is limited to determining whether the financing order, or the order on reconsideration, conforms to the State Constitution and State and federal law and is within the authority of the Commission under this section.

(6) Duration of financing order. –

a. A financing order remains in effect and energy transition property under the financing order continues to exist until energy transition bonds issued pursuant to the financing order have been paid in full or defeased and, in each case, all Commission-approved financing costs of such energy transition bonds have been recovered in full.

b. A financing order issued to a public utility remains in effect and

unabated notwithstanding the reorganization, bankruptcy or other insolvency proceedings, merger, or sale of the public utility or its successors or assignees.

(c) Exceptions to Commission Jurisdiction. –

(1) The Commission may not, in exercising its powers and carrying out its duties regarding any matter within its authority pursuant to this Chapter, consider the energy transition bonds issued pursuant to a financing order to be the debt of the public utility other than for federal income tax purposes, consider the energy transition charges paid under the financing order to be the revenue of the public utility for any purpose, or consider the energy transition costs or financing costs specified in the financing order to be the costs of the public utility, nor may the Commission determine any action taken by a public utility which is consistent with the financing order to be unjust or unreasonable.

(2) The Commission may not order or otherwise directly or indirectly require a public utility to use energy transition bonds to finance any project, addition, plant, facility, extension, capital improvement, equipment, or any other expenditure. After the issuance of a financing order, the public utility retains sole discretion regarding whether to cause the energy transition bonds to be issued, including the right to defer or postpone such sale, assignment, transfer, or issuance. Nothing shall prevent the public utility from abandoning the issuance of energy transition bonds under the financing order by filing with the Commission a statement of abandonment and the reasons therefor. The Commission may not refuse to allow a public utility to recover energy transition costs in an otherwise permissible fashion, or refuse or condition authorization or approval of the issuance and sale by a public utility of securities or the assumption by the public utility of liabilities or obligations, solely because of the potential availability of energy transition bond financing.

(d) Public Utility Duties. –

(1) The electric bills of a public utility that has obtained a financing order and caused energy transition bonds to be issued must comply with the provisions of this subsection; however, the failure of a public utility to comply with this subsection does not invalidate, impair, or affect any financing order, energy transition property, energy transition charge, or energy transition bonds. The public utility must do the following:

a. Explicitly reflect that a portion of the charges on such bill represents energy transition charges approved in a financing order issued to the public utility and, if the energy transition property has been transferred to an assignee, must include a statement to the effect that the assignee is the owner of the rights to energy transition charges and that the public utility or other entity, if applicable, is acting as a collection agent or servicer for the assignee. The tariff applicable to customers must indicate the energy transition charge and the ownership of the charge.

b. Include the energy transition charge on each customer's bill as a

separate line item and include both the rate and the amount of the charge on each bill.

c. If a public utility's petition for a financing order is denied or withdrawn or for any reason no energy transition bonds are issued, any costs of retaining expert consultants and counsel on behalf of the commission or the public staff, as authorized by Section and approved by the commission, shall be paid by the applicant public utility and shall be eligible for recovery by the public utility, including carrying costs, in the electric utility's future rates.

(e) Energy transition Property. –

(1) Provisions applicable to energy transition property. –

a. All energy transition property that is specified in a financing order constitutes an existing, present intangible property right or interest therein, notwithstanding that the imposition and collection of energy transition charges depends on the public utility, to which the financing order is issued, performing its servicing functions relating to the collection of energy transition charges and on future electricity consumption. The property exists (i) regardless of whether or not the revenues or proceeds arising from the property have been billed, have accrued, or have been collected and (ii) notwithstanding the fact that the value or amount of the property is dependent on the future provision of service to customers by the public utility or its successors or assignees and the future consumption of electricity by customers.

b. Energy transition property specified in a financing order exists until energy transition bonds issued pursuant to the financing order are paid in full and all financing costs and other costs of such energy transition bonds have been recovered in full.

c. All or any portion of energy transition property specified in a financing order issued to a public utility may be transferred, sold, conveyed, or assigned to a successor or assignee that is wholly owned, directly or indirectly, by the public utility and created for the limited purpose of acquiring, owning, or administering energy transition property or issuing energy transition bonds under the financing order. All or any portion of energy transition property may be pledged to secure energy transition bonds issued pursuant to the financing order, amounts payable to financing parties and to counterparties under any ancillary agreements, and other financing costs. Any transfer, sale, conveyance, assignment, grant of a security interest in or pledge of energy transition property by a public utility, or an affiliate of the public utility, to an assignee, to the extent previously authorized in a financing order, does not require the prior consent and approval of the Commission.

d. If a public utility defaults on any required payment of charges arising from energy transition property specified in a financing order, a court, upon application by an interested party, and without limiting any other

remedies available to the applying party, shall order the sequestration and payment of the revenues arising from the energy transition property to the financing parties or their assignees. Any such financing order remains in full force and effect notwithstanding any reorganization, bankruptcy, or other insolvency proceedings with respect to the public utility or its successors or assignees.

e. The interest of a transferee, purchaser, acquirer, assignee, or pledgee in energy transition property specified in a financing order issued to a public utility, and in the revenue and collections arising from that property, is not subject to setoff, counterclaim, surcharge, or defense by the public utility or any other person or in connection with the reorganization, bankruptcy, or other insolvency of the public utility or any other entity.

f. Any successor to a public utility, whether pursuant to any reorganization, bankruptcy, or other insolvency proceeding or whether pursuant to any merger or acquisition, sale, or other business combination, or transfer by operation of law, as a result of public utility restructuring or otherwise, must perform and satisfy all obligations of, and have the same rights under a financing order as, the public utility under the financing order in the same manner and to the same extent as the public utility, including collecting and paying to the person entitled to receive the revenues, collections, payments, or proceeds of the energy transition property. Nothing in this sub-subdivision is intended to limit or impair any authority of the Commission concerning the transfer or succession of interests of public utilities.

g. Energy transition bonds shall be nonrecourse to the credit or any assets of the public utility other than the energy transition property as specified in the financing order and any rights under any ancillary agreement.

(2) Provisions applicable to security interests. –

a. The creation, perfection, and enforcement of any security interest in energy transition property to secure the repayment of the principal and interest and other amounts payable in respect of energy transition bonds; amounts payable under any ancillary agreement and other financing costs are governed by this subsection and not by the provisions of the Code.

b. A security interest in energy transition property is created, valid, and binding and perfected at the later of the time: (i) the financing order is issued, (ii) a security agreement is executed and delivered by the debtor granting such security interest, (iii) the debtor has rights in such energy transition property or the power to transfer rights in such energy transition property, or (iv) value is received for the energy transition property. The description of energy transition property in a security agreement is sufficient if the description refers to this section and the financing order creating the energy transition property.

c. A security interest shall attach without any physical delivery of collateral or other act, and, upon the filing of a financing statement with the office of the Secretary of State, the lien of the security interest

shall be valid, binding, and perfected against all parties having claims of any kind in tort, contract, or otherwise against the person granting the security interest, regardless of whether the parties have notice of the lien. Also upon this filing, a transfer of an interest in the energy transition property shall be perfected against all parties having claims of any kind, including any judicial lien or other lien creditors or any claims of the seller or creditors of the seller, and shall have priority over all competing claims other than any prior security interest, ownership interest, or assignment in the property previously perfected in accordance with this section.

d. The Secretary of State shall maintain any financing statement filed to perfect any security interest under this section in the same manner that the Secretary maintains financing statements filed by transmitting utilities under the Code. The filing of a financing statement under this section shall be governed by the provisions regarding the filing of financing statements in the Code.

e. The priority of a security interest in energy transition property is not affected by the commingling of energy transition charges with other amounts. Any pledgee or secured party shall have a perfected security interest in the amount of all energy transition charges that are deposited in any cash or deposit account of the qualifying utility in which energy transition charges have been commingled with other funds and any other security interest that may apply to those funds shall be terminated when they are transferred to a segregated account for the assignee or a financing party.

f. No application of the formula-based adjustment mechanism as provided in this section will affect the validity, perfection, or priority of a security interest in or transfer of energy transition property.

g. If a default or termination occurs under the energy transition bonds, the financing parties or their representatives may foreclose on or otherwise enforce their lien and security interest in any energy transition property as if they were secured parties with a perfected and prior lien under the Code, and the Commission may order amounts arising from energy transition charges be transferred to a separate account for the financing parties' benefit, to which their lien and security interest shall apply. On application by or on behalf of the financing parties, the Superior Court of Wake County shall order the sequestration and payment to them of revenues arising from the energy transition charges.

(3) Provisions applicable to the sale, assignment, or transfer of energy transition property. –

a. Any sale, assignment, or other transfer of energy transition property shall be an absolute transfer and true sale of, and not a pledge of or secured transaction relating to, the seller's right, title, and interest in, to, and under the energy transition property if the documents governing the transaction expressly state that the transaction is a sale or other absolute transfer other than for federal and State income tax purposes. For all purposes other than federal and State income tax purposes, the parties' characterization of a transaction as a sale of an interest in energy transition property shall be conclusive that the transaction is a true sale and that ownership has passed to the party

characterized as the purchaser, regardless of whether the purchaser has possession of any documents evidencing or pertaining to the interest. A transfer of an interest in energy transition property may be created only when all of the following have occurred: (i) the financing order creating the energy transition property has become effective, (ii) the documents evidencing the transfer of energy transition property have been executed by the assignor and delivered to the assignee, and (iii) value is received for the energy transition property. After such a transaction, the energy transition property is not subject to any claims of the transferor or the transferor's creditors, other than creditors holding a prior security interest in the energy transition property perfected in accordance with subdivision (2) of subsection (e) of this section.

b. The characterization of the sale, assignment, or other transfer as an absolute transfer and true sale and the corresponding characterization of the property interest of the purchaser, shall not be affected or impaired by the occurrence of any of the following factors:

1. Commingling of energy transition charges with other amounts.
2. The retention by the seller of (i) a partial or residual interest, including an equity interest, in the energy transition property, whether direct or indirect, or whether subordinate or otherwise, or (ii) the right to recover costs associated with taxes, franchise fees, or license fees imposed on the collection of energy transition charges.
3. Any recourse that the purchaser may have against the seller.
4. Any indemnification rights, obligations, or repurchase rights made or provided by the seller.
5. The obligation of the seller to collect energy transition charges on behalf of an assignee.
6. The transferor acting as the servicer of the energy transition charges or the existence of any contract that authorizes or requires the public utility, to the extent that any interest in energy transition property is sold or assigned, to contract with the assignee or any financing party that it will continue to operate its system to provide service to its customers, will collect amounts in respect of the energy transition charges for the benefit and account of such assignee or financing party, and will account for and remit such amounts to or for the account of such assignee or financing party.
7. The treatment of the sale, conveyance, assignment, or other transfer for tax, financial reporting, or other purposes.
8. The granting or providing to bondholders a preferred right to the energy transition property or credit enhancement by the public utility or its affiliates with respect to such energy transition bonds.
9. Any application of the formula-based adjustment mechanism as provided in this section.

c. Any right that a public utility has in the energy transition property before its pledge, sale, or transfer or any other right created under this section or created in the financing order and assignable under this section or assignable pursuant to a financing order is property in the form of a contract right or a chose in action. Transfer of an interest in energy transition property to an assignee is enforceable only upon the later of

(i) the issuance of a financing order, (ii) the assignor having rights in such energy transition property or the power to transfer rights in such energy transition property to an assignee, (iii) the execution and delivery by the assignor of transfer documents in connection with the issuance of energy transition bonds, and (iv) the receipt of value for the energy transition property. An enforceable transfer of an interest in energy transition property to an assignee is perfected against all third parties, including subsequent judicial or other lien creditors, when a notice of that transfer has been given by the filing of a financing statement in accordance with sub-subdivision c. of subdivision (2) of this subsection. The transfer is perfected against third parties as of the date of filing.

d. The Secretary of State shall maintain any financing statement filed to perfect any sale, assignment, or transfer of energy transition property under this section in the same manner that the Secretary maintains financing statements filed by transmitting utilities under the Code. The filing of any financing statement under this section shall be governed by the provisions regarding the filing of financing statements in the Code. The filing of such a financing statement is the only method of perfecting a transfer of energy transition property.

e. The priority of a transfer perfected under this section is not impaired by any later modification of the financing order or energy transition property or by the commingling of funds arising from energy transition property with other funds. Any other security interest that may apply to those funds, other than a security interest perfected under subdivision (2) of this subsection, is terminated when they are transferred to a segregated account for the assignee or a financing party. If energy transition property has been transferred to an assignee or financing party, any proceeds of that property must be held in trust for the assignee or financing party.

f. The priority of the conflicting interests of assignees in the same interest or rights in any energy transition property is determined as follows:

1. Conflicting perfected interests or rights of assignees rank according to priority in time of perfection. Priority dates from the time a filing covering the transfer is made in accordance with sub-subdivision c. of subdivision (2) of this subsection.
2. A perfected interest or right of an assignee has priority over a conflicting unperfected interest or right of an assignee.
3. A perfected interest or right of an assignee has priority over a person who becomes a lien creditor after the perfection of such assignee's interest or right.

(f) Description or Indication of Property. – The description of energy transition property being transferred to an assignee in any sale agreement, purchase agreement, or other transfer agreement, granted or pledged to a pledgee in any security agreement, pledge agreement, or other security document, or indicated in any financing statement is only sufficient if such description or indication refers to the financing order that created the energy transition property and states that the agreement or financing statement covers

all or part of the property described in the financing order. This section applies to all purported transfers of, and all purported grants or liens or security interests in, energy transition property, regardless of whether the related sale agreement, purchase agreement, other transfer agreement, security agreement, pledge agreement, or other security document was entered into, or any financing statement was filed.

(g) Financing Statements. – All financing statements referenced in this section are subject to Part 5 of Article 9 of the Code, except that the requirement as to continuation statements does not apply.

(h) Choice of Law. – The law governing the validity, enforceability, attachment, perfection, priority, and exercise of remedies with respect to the transfer of an interest or right or the pledge or creation of a security interest in any energy transition property shall be the laws of this State.

(i) Energy transition Bonds Not Public Debt. – Neither the State nor its political subdivisions are liable on any energy transition bonds, and the bonds are not a debt or a general obligation of the State or any of its political subdivisions, agencies, or instrumentalities, nor are they special obligations or indebtedness of the State or any agency or political subdivision. An issue of energy transition bonds does not, directly, indirectly, or contingently, obligate the State or any agency, political subdivision, or instrumentality of the State to levy any tax or make any appropriation for payment of the energy transition bonds, other than in their capacity as consumers of electricity. All energy transition bonds must contain on the face thereof a statement to the following effect: "Neither the full faith and credit nor the taxing power of the State of North Carolina is pledged to the payment of the principal of, or interest on, this bond."

(j) Legal Investment. – All of the following entities may legally invest any sinking funds, moneys, or other funds in energy transition bonds:

(1) Subject to applicable statutory restrictions on State or local investment authority, the State, units of local government, political subdivisions, public bodies, and public officers, except for members of the Commission.

(2) Banks and bankers, savings and loan associations, credit unions, trust companies, savings banks and institutions, investment companies, insurance companies, insurance associations, and other persons carrying on a banking or insurance business.

(3) Personal representatives, guardians, trustees, and other fiduciaries.

(4) All other persons authorized to invest in bonds or other obligations of a similar nature.

(k) Obligation of Nonimpairment. –

(1) The State and its agencies, including the Commission, pledge and agree with bondholders, the owners of the energy transition property, and other financing parties that the State and its agencies will not take any action listed in this subdivision. This paragraph does not preclude limitation or alteration if full compensation is made by law for the full protection of the energy transition charges collected pursuant to a financing order and of the bondholders and any assignee or financing party entering into a contract with the public utility. The prohibited actions are as follows:

a. Alter the provisions of this section, which authorize the Commission to create an irrevocable contract right or chose in action by the issuance of a financing order, to create energy transition property, and make the energy transition charges imposed by a financing order irrevocable, binding, or nonbypassable charges.

b. Take or permit any action that impairs or would impair the value of energy transition property or the security for the energy transition bonds or revises the energy transition costs for which recovery is authorized.

c. In any way impair the rights and remedies of the bondholders, assignees, and other financing parties.

d. Except for changes made pursuant to the formula-based adjustment mechanism authorized under this section, reduce, alter, or impair energy transition charges that are to be imposed, billed, charged, collected, and remitted for the benefit of the bondholders, any assignee, and any other financing parties until any and all principal, interest, premium, financing costs and other fees, expenses, or charges incurred, and any contracts to be performed, in connection with the related energy transition bonds have been paid and performed in full.

(2) Any person or entity that issues energy transition bonds may include the language specified in this subsection in the energy transition bonds and related documentation.

(l) Not a Public Utility. – An assignee or financing party is not a public utility or person providing electric service by virtue of engaging in the transactions described in this section.

(m) Conflicts. – If there is a conflict between this section and any other law regarding the attachment, assignment, or perfection, or the effect of perfection, or priority of, assignment or transfer of, or security interest in energy transition property, this section shall govern.

(n) Consultation. – In making determinations under this section, the Commission or public staff or both may engage an outside consultant and counsel.

(o) Effect of Invalidity. – If anyprovision of this section is held invalid or is invalidated, superseded, replaced, repealed, or expires for any reason, that occurrence does not affect the validity of any action allowed under this section which is taken by a public utility, an assignee, a financing party, a collection agent, or a party to an ancillary agreement; and any such action remains in full force and effect with respect to all energy transition bonds issued or authorized in a financing order issued under this section before the date that such provision is held invalid or is invalidated, superseded, replaced, or repealed, or expires for any reason."

(p) **Conditions for selecting replacement capacity and energy [DISCLAIMER: This section received support by the majority, but not by all NERP participants.]**

(1) the public utility shall employ a competitive bidding process, approved by the commission as to its structure, to procure energy resources required to fill the resource need resulting from the closure of generating facilities under this Section.

(2) The Commission may permit the utility or its affiliates to compete in the bidding process and own a portion of the replacement resources, including associated infrastructure, if the Commission finds –

a. The utility bids were evaluated in the same manner as other bids;
b. the cost of utility or affiliate ownership of the replacement resources is reasonable and is the least cost choice, with an acceptable rate impact; and
c. that utility ownership of replacement resources is necessary to assure the utility's financial health.

(3) Utility ownership may consist of utility or affiliate self-builds, build-transfers from independent power producers, or sales of existing assets from independent power producers or similar commercial arrangements.

(4) In determining whether to approve proposed replacement resources, the Commission shall consider –

a. the risk that future federal environmental regulations could increase the life-cycle cost of the resource and create future stranded assets; and

b. whether the proposed replacement resources support the state's energy goals, as expressed by the governor and the legislature.

SECTION 2. G.S. 25-9-109(d) reads as rewritten:

"(d) Inapplicability of Article. – This Article does not apply to:

…

(13) An assignment of a deposit account in a consumer transaction, but G.S. 25-9-315 and G.S. 25-9-322 apply with respect to proceeds and priorities in proceeds; ~~or~~

(14) The creation, perfection, priority, or enforcement of any lien on, assignment of, pledge of, or security in, any revenues, rights, funds, or other tangible or intangible assets created, made, or granted by this State or a governmental unit in this State, including the assignment of rights as secured party in security interests granted by any party subject to the provisions of this Article to this State or a governmental unit in this State, to secure, directly or indirectly, any bond, note, other evidence of indebtedness, or other payment obligations for borrowed money issued by, or in connection with, installment or lease purchase financings by, this State or a governmental unit in this State. However, notwithstanding this subdivision, this Article does apply to the creation, perfection, priority, and enforcement of security interests created by this State or a governmental unit in this State in equipment or fixtures; ~~or~~

(15) The creation, perfection, priority, or enforcement of any sale, assignment of, pledge of, security interest in, or other transfer of, any interest or right or portion of any interest or right in any storm recovery property as defined G.S. 62-172;
"or

(16) The creation, perfection, priority, or enforcement of any sale, assignment of, pledge of, security interest in, or other transfer of, any interest or right or portion of any interest or right in any energy transition property as defined G.S. 62-173."

SECTION 3. This act is effective when it becomes law.